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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,334

08/26/2003

Yasuo Tamura

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EXAMINER

MUSSELMAN, TIMOTHY A

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/647,334

Applicant(s)

TAMURA ET AL.

Examiner

Timothy Musselman

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


ROBERT E. PEZZUTO

SUPERVISORY PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The amendments fail to overcome the previous rejection and the presented arguments are not persuasive. Applicant argues that in the system of Toshiya, there is no *response* email sent by the applicant, rather the applicant clicks on a link which directs the user to a web page. Examiner concurs, but notes that from said webpage a form is filled out and a *response* is sent to the system, which in turn transmits the test results back to the user. This interaction is described in at least paragraphs 17-19. Since the communication is electronic and confidential, examiner interprets it as being completely analogous to email. Applicant further argues that the the system of Toshiya does not determine a respnse order based on reception time. Examiner disagrees. This is implicit in the system of Toshiya as a whole, because the results are transmitted immediately when the process is carried out. Thus, the results would naturally be transmitted in the order that the requests are received on a first come first serve basis. See at least paragraphs 17-20. Applicant further argues that Funk does not cure the deficiency of Toshiya's failure to disclose transmitting the responses based on server load. Examiner disagrees. Toshiya already discloses sending the results in order, as previously described, so the only teaching missing is of adjusting the outbound delivery based on server load. Since both applicant's invention and the Funk reference are mass emailing systems, examiner considers them to be analogous art. Funk teaches of sending emails based on the server load, as described in at least col. 13: 48-62. Since applicant has only claimed wherein the results are transmitted based on the server load without claiming additiional details, Funk cures this deficiency as the nature of the transmissions are based on the server load. Regarding applicants arguments about the examinee number, the details of the hash algorithm were not what examiner was pointing to, but instead was merely indicating that numbers are a common way to organize information. This argument is moot, as on further consideration Toshiya does in fact disclose that the examinees information can be identified and accessed by examinee numbers in at least paragraph 21. Applicant further argues that Toshiya does not disclose the formation of groups to receive the information. Examiner disagrees. It is described in paragraph 26 how examinees can build a profile beforehand that is stored in a user information database that comprises email addresses of others to be informed of the results. Examiner interprets the collection of individuals to notify as a *group* of individuals to be notified.